ITX InTouch

[PwC InTouch Newsletter]

Issue 2, 2024 - April 2024 to June 2024

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Introduction

Welcome to the latest issue of InTouch which covers the key developments in value added tax (VAT) and goods and services tax (GST) in the Asia Pacific region during the period April 2024 to June 2024. As economies within our region become increasingly impacted by Global events, the role indirect taxes play in either supporting targeted stimulus measures or aiding revenue collections will become more and more critical.

Please reach out to any of the PwC contacts listed in this issue if you have any questions on the news items.

Table of contents

Australia

GST and Supplies of Combination Food

- The Australian Taxation Office (ATO) has finalised Taxation Determination GSTD 2024/1, which provides the Commissioner of Taxation's view on the meaning of a food that is a 'combination of one or more foods' in the context of the goods and services tax (GST) for the purposes of paragraph 38-3(1)(c) of the A New Tax System (Goods and Services Tax) Act 1999 (GST Act), in light of the Administrative Appeals Tribunal's decision in Chobani Pty Ltd and Commissioner of Taxation [2023] AATA 1664.
- It is the Commissioner's view that the following three principles apply when determining whether there is a supply of combination food:
  a. There must be at least one separately identifiable taxable food;
  b. The separately identifiable taxable food must be sufficiently joined together with the other components of the overall product at the time of sale; and
  c. The separately identifiable taxable food must not be so integrated into the overall product, or be so insignificant within that product, that it has no effect on its characterisation.
- If a supply is not a supply of combination food, it may be necessary to determine if supply is a mixed or composite supply, which is explained in GSTR 2001/8.
- GSTD 2024/1 applies both before and after its date of issue. However, the Commissioner will continue to act in accordance with Law Administration Practice Statement PS LA 2011/27 Determining whether the ATO's views of the law should be applied prospectively only and PS LA 2012/2 (GA) GST classification of food and beverage items.

Overhead Acquisitions Confirmed Partly Creditable

- In Commissioner of Taxation v Hannover Life Re of Australasia Ltd [2024] FCAFC 23, the Full Federal Court found for the taxpayer, a life insurance company. in relation to whether it was entitled to input tax credits on certain overseas acquisitions.
- The Federal Court had allowed the taxpayer's appeal in part, with the company's overhead acquisitions found to be creditable acquisitions to the extent that they related to the taxpayer's GST-free supplies, and that, subject to one adjustment, the taxpayer's proposed methodology of apportionment was fair and reasonable in the circumstances of its enterprise (for further details, refer to the August 2023 edition of Monthly Tax Update).
- The Commissioner appealed the orders made by the primary judge to the Full Federal Court, contending that the taxpayer was not entitled to any input tax credits in respect of overhead acquisitions. The Full Federal Court dismissed the Commissioner's appeal with costs, noting that the primary judge's conclusion that the overhead acquisitions were related to the making of all of the taxpayer's supplies was not shown to be attended by error or otherwise incorrect, and that no error had been identified by the Commissioner in the primary judge's finding that the acquisitions related to both input taxed and GST-free supplies. Further, the primary judge was not shown to have erred in relation to his evaluation of the apportionment methodology.

ATO Guidance on RITC Claims on Complex IT Outsourcing Agreements

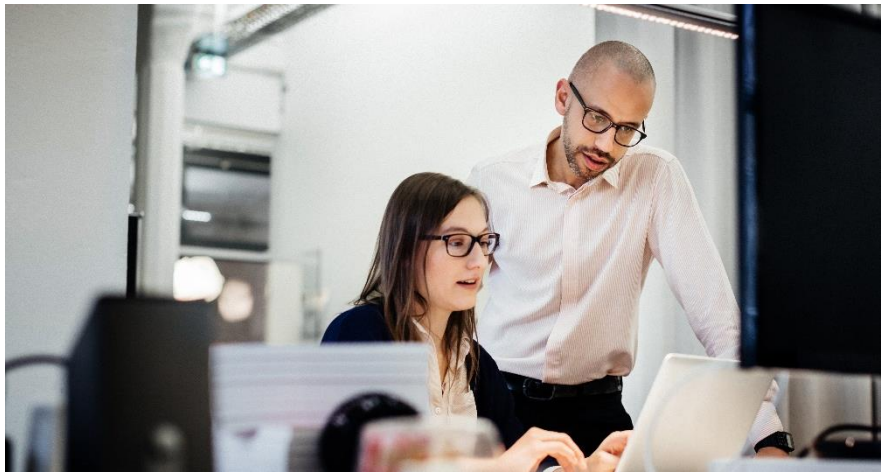
- The ATO has issued guidance outlining its expectations to assist taxpayers with reduced input tax credit (RITC) claims on complex

information technology (IT) outsourcing agreements acquired partly or wholly in making of input taxed supplies.

- The guidance highlights the types of questions the ATO will ask when reviewing RITC claims in relation to acquisitions made under a complex IT outsourcing agreement, to ensure compliance with the ATO's view in Goods and Services Tax Ruling GSTR 2004/1 Goods and services tax: reduced credit acquisitions. It is intended to provide practical guidance to assist taxpayers in reviewing their arrangements and determine their entitlements in accordance with:
  a. GSTR 2004/1 – which sets out the application of table item 2 (see paragraphs 73 to 190 of the Ruling;
  b. Goods and Services Tax Ruling GSTR 2002/2 Goods and Services Tax: GST treatment of financial supplies and related supplies and acquisitions – which sets out the GST treatment of financial supplies and related supplies and acquisitions; and
  c. Goods and Services Tax Ruling GSTR 2006/3 Goods and services tax: determining the extent of creditable purpose for providers of financial supplies – which sets out the ATO's view in determining the extent of creditable purpose for providers of financial supplies.

Updates to the ATO's Approach to Reviewing the Top 1,000 Taxpayers

- The ATO is planning to revise its Top 1,000 combined assurance review (CAR) program. The ATO will differentiate between taxpayers who have robust tax risk management and governance frameworks in place and those who do not. This will also have implications in relation to the ATO's approach to the goods and services tax (GST) compliance under a CAR. Read more in our Alert.



For more information please contact:

Matthew Strauch
Partner – Indirect Tax, PwC Australia
Phone: +61 408 180 305
Email: matthew.strauch@au.pwc.com

India

Corporate Guarantee provided by Holding Company to a Bank/ Financial Institution for Disbursal of Loan to Subsidiary Company

- Central government made amendments in October 2023 in the valuation provisions for corporate guarantee provided by holding company to a Bank/ Financial Institution (FI) for the grant of loan/ financial assistance by such bank/ FI to its subsidiary company. For the levy of GST, the government prescribed the taxable value @ 1% of the guarantee offered by holding company to such Bank/ FI for the loan disbursed to subsidiary company, or the actual consideration agreed, whichever is higher.
- Government has now further amended the above provisions retrospectively from October 2023 by narrowing the scope of taxing such transactions by including only guarantees provided to the subsidiary company situated in India. Further, if the recipient is eligible for full ITC, the value declared on the invoice will be deemed to be the taxable value. In case multiple guarantors are involved, taxable value of 1% will be proportionate to each co – guarantor's share of guarantee.

Availability of Input Tax Credit (ITC) of Tax Paid by Recipient under Reverse Charge Mechanism (RCM)

- In case of import of service by an Indian subsidiary company from its foreign holding company, where the tax is paid under RCM by Indian subsidiary company, it is now clarified that any value declared on the tax invoice would be deemed to be valid and ITC in respect of such tax will be available to the Indian subsidiary company, if the Indian subsidiary company is eligible for full ITC.
- Further, it has also been clarified that recipient would be eligible to claim ITC of the tax paid under RCM till 30th November of financial year subsequent to the year in which such tax is paid and self-invoice is issued.

Other Key Updates

- Various Circulars & Notifications have been issued by the Central government, wherein the clarification has been provided in respect of the following aspects:
  a. In order to reduce litigation by Revenue authorities, subject to certain principles and exclusions, the government has fixed the monetary limits of filing appeals by revenue authorities before Appellate Tribunals, High Courts and Supreme Court.
  b. In case of refund of tax paid on export of goods with payment of tax, the government has now amended the GST provisions and clarified that:
     - In case of upward revision in price subsequent to export of goods, the refund of additional taxes paid on account of increase in price can be claimed through a mechanism to be specified.
     - In case of downward revision in price of exported goods, the exporter would be required to deposit the refund received in proportion to the reduction in price of exported goods, along with the applicable interest.
  c. The Government has reduced the rate of Tax Collected at Source (TCS) by Electronic Commerce Operators (ECOs) from 1% to 0.5% to reduce the working capital blockage of suppliers supplying through such ECOs.

Case Laws

- **Hon'ble Kerala High Court in the case of M/s Faizal Traders vs. Deputy Commissioner of Central Excise & Ors. [2024 - VIL - 527 KER]** holds that notifications issued to extend time limit to issue SCN are not ultra vires to section 168A of the CGST Act, 2017 observing that:

  a. The Notifications were issued by the Central Government on the recommendation of the GST Council based on a suo motu order passed by the Supreme Court in consideration of the COVID-19 pandemic wherein the Central and the State Governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices.

  b. A conscious policy decision was taken not to do enforcement actions in the initial period of implementation of the GST law. Therefore, no action for scrutiny, audit, etc., could be undertaken during the initial period of GST implementation.

- **Hon'ble Karnataka High Court in the case of M/s Xylem Resources Management Pvt. Ltd. vs. Deputy Director, Directorate General of Central Excise Intelligence (DGCEI) [(2024) 18 Centax 254 (Kar.)]** held that Writ petition can't be filed against mere issuance of SCN unless it is a nullity and issued without jurisdiction. The Appellant received summons from the Senior Intelligence Officer of DGCEI to appear before them for non-payment of service tax, after which the Appellant filed a writ challenging the summons and contended that the DGCEI has no jurisdiction to issue summons for investigation and that it is not the competent officer to do so. The Court dismissed the petition, noting that in the instant case, though summons were issued by DGCEI, the SCN makes it abundantly clear that appellant is required to show cause to Commissioner of Central Excise and Service Tax 1, Commissionerate, Bengaluru which is the Competent Authority to determine the service tax liability of the appellants/petitioners. Therefore, the Court stated that the appellants must respond to the SCN and further proceedings should take place in accordance with the law.

- **Hon'ble Allahabad High Court in the case of M/s S Kumar Construction vs. Commissioner of Central Excise (Appeals) [TS-188-HC-2024(ALL)-ST]** held that Limitation Act cannot be applied to extend limitation period beyond what is prescribed under Finance Act and Central Excise Act. The Appellant filed a Writ petition against order passed by the appellate authority against the Appellant on the ground that the Appeal was time barred as it was filed beyond the period of 85 days i.e., beyond the limitation prescribed under Section 85 the of the Finance Act, 1994. The Court dismissed the Writ petition on the basis that in the case of Hongo India Private Limited1, The Supreme Court clarified that the legislature intended for the appellate authority to entertain appeals after the expiration of the initial 60-day limitation period only within 30 additional days. If there's no provision allowing for condonation of delay beyond the prescribed period, Section 5 of the Limitation Act 1963 (Limitation Act) cannot be applied. It further emphasized that the Finance Act, 1994, being a special statute, operates as a self-contained code, implicitly excluding the application of the Limitation Act. Special statutes like the Finance Act, 1994 or Central Excise Act, 1944 govern specific legal areas comprehensively, including procedural timelines, thereby implying exclusion of the Limitation Act.

For more information please contact:

Pratik Jain
Partner, National Leader – Indirect Tax, PwC India
Phone: +91 98111 41868
Email: pratik.b.jain@au.pwc.com

Malaysia

Expansion of Scope of Service Tax Exemption for Logistics Sector

- The Royal Malaysian Customs Department (RMCD) issued the Service Tax Policy No. 4/2024 dated 29 March 2024 (effective from 1 March 2024) to provide for the expansion of scope of service tax exemption for the logistics sector. Logistic services provided within or between special areas (SA) / designated areas (DA) or between SA and DA are not subject to service tax except for the services for release of goods from customs control.
- Service tax exemptions are also given to the following logistics services:
  a. Door-to-door goods delivery services which involve:
     - Provision of goods delivery services from a place outside Malaysia to a place in Malaysia or from a place in Malaysia to a place outside Malaysia without going through third party;
     - Provision of goods delivery services by the same network service provider from consignor to recipient;
     - The entire journey of the goods uses the same airway bill / bill of lading / consignment note from consignor to recipient; and
     - "Single billing invoice" is used for the charge of delivery from consignor to recipient.
  b. Logistics services related to transit activities, i.e. movements of goods into Malaysia and subsequently transfer them to another place outside Malaysia, through the modes of transport of land, sea and air.
  c. Ocean freight services for all goods using sea transportation going through or to the following journey or destinations:
     - Peninsular Malaysia to Sabah / Sarawak / Labuan;
     - Sabah / Sarawak / Labuan to Peninsular Malaysia; and
     - Journey between Sabah, Sarawak and Labuan.

Service Tax Treatment on Maintenance Service Related to Residential Building

- The RMCD has also issued the Service Tax Policy No. 5/2024 dated 1 April 2024 to clarify the service tax treatments on the following maintenance or repair services:
  a. Maintenance or repair services on moveable items/equipment in a residential building is subject to service tax.
  b. Maintenance or repair services on items/equipment fixed to the structure of a residential building and provided to the owner or resident or the building is not subject to service tax.
  c. Sinking fund related to residential building charged by a developer, joint management body or management corporation is not subject to service tax.
  d. Warranty provided free when a product is purchased is not subject to service tax but the extension of warranty which requires additional payment is subject to service tax.

Service Tax Exemption on Maintenance or Repair Services Relating to Maintenance, Repair and Overhaul (MRO) Activities

- The RMCD has also issued the Service Tax Policy No. 6/2024 dated 30 April 2024 to inform that the Minister of Finance (MOF) has granted service tax exemption on maintenance or repair services involving Maintenance, Repair and Overhaul (MRO) activities prescribed by the Malaysian Investment Development Authority (MIDA) effective from 1 March 2024 to 31 December 2027.
- The following recipients of MRO activity services are exempted from paying service tax on the MRO activity services provided by either one of the 2 groups of service providers mentioned below:
  a. Airline companies which have Air Operator Certificates (AOC) issued by the Civil Aviation Authority of Malaysia (CAAM);
  b. Shipping companies registered with the Malaysia Marine Department;
  c. Federal or State Government Departments such as Malaysian Armed Forces, Royal Malaysian Police and Fire & Rescue Department of Malaysia; and
  d. Recipients who are located overseas. [Note: The goods or equipment belonging to the recipients of MRO activity services located overseas must be taken out of Malaysia after the maintenance and repair services subject to the conditions imposed by RMCD.]
- The 2 groups of service providers are:
  a. Approved Maintenance Organisations (AMO) registered with CAAM; and
  b. Shipbuilding or ship repairing service providers approved by MIDA.

Meaning of "Used Directly" or "Directly Used" in the Sales Tax (Person Exempted from Payment of Tax) Order 2017

- The RMCD has also issued the Public Ruling No. 3/2024 dated 1 June 2024 to explain the meaning of "used directly" or "directly used" in the following items of the Sales (Persons Exempted from Payment of Tax) Order 2018 ("the Exemption Order"):
  c. Items 33A, 33B, 46, 47, 48, 55, 63 and 65 of Schedule A; and
  d. Item 3 of Schedule B.
- "Used directly" or "directly used" means all the goods exempted under Column (3) of the Exemption Order, which are used in the manufacturing process including packaging process, Maintenance, Repair and Overhaul (MRO) process, upstream petroleum extraction activities, construction and maintenance of plants, hotel businesses or haulage operations carried out by the persons, must be:
  a. Located in the premises of the person mentioned in Column (2), Schedule A or Schedule B of the Exemption Order;
  b. (b) changed or modified from raw materials or components to become finished goods until the packing and packaging process; or
  c. (c) for the purposes of handling or transporting when the processes or activities are being carried out.

For more information please contact:

Raja Kumaran
Tax Director, Indirect Tax, PwC Malaysia
Phone: +60 (3) 2173 1701
Email: raja.kumaran@au.pwc.com

New Zealand

New Zealand Offshore Gambling Duty Applies from 1 July 2024

- New Zealand's High Court recently considered whether the customs valuation of goods should include certain kinds of licensing and royalty payments (Chief Executive of New Zealand Customs Service v Country Road Clothing (NZ) Ltd [2024] NZHC 1696).
- The case concerned licencing and royalty payments made by Country Road Clothing (N.Z.) Limited (CRNZ) to Country Road Clothing Pty Ltd (CRAU). CRNZ is a subsidiary of CRAU. CRNZ imports clothing from CRAU.
- CRNZ pays customs duties on these imports based on the transaction value (i.e. the price paid or payable by CRNZ to CRAU). The transaction value in this case was the cost of the goods to CRAU plus a mark-up of 10-15%.
- In addition, CRNZ made licencing and royalty payments to CRAU. This payment was described by CRNZ as relating to the "retail formula" behind operating a Country Road shop – for example know-how, trade secrets, confidential information, marketing content and store layout.
- The New Zealand Customs Service (NZ Customs) asserted that the licencing and royalty payments formed part of the customs value of the imported goods pursuant to clause 3(1)(a)(iv) of schedule 2 of the Customs and Excise Act 1996 (the Act; noting that the Act has been replaced by the Customs and Excise Act 2018 – however, this particular provision is included in both Acts). Under subpara (iv) the value of goods must be adjusted to include the following:

  "royalties and licence fees, including payments for patents, trademarks, and copyrights in respect of the imported goods that the buyer must pay, directly or indirectly, as a condition of the sale of the goods for export to New Zealand, exclusive of charges for the right to reproduce the imported goods in New Zealand…"

- CRNZ's position was that the royalty payments did not form part of the customs value of the goods, because the price that it paid for the goods already included IP relating to the goods. Rather, the royalty payments were for IP relating to the "retail experience" CRNZ needed to operate, which were one step removed from the actual goods.
- The High Court did not agree, and found in favour of NZ Customs for the following reasons:
  a. The reality of the contractual arrangements did not support a clear separation between the licensing/royalty payments and the goods themselves (the royalty payments and what they were for were not documented in detail by CRNZ or CRAU).
  b. The New Zealand Court of Appeal had adopted a wide interpretation of the valuation rules in a series of similar cases.
  c. Although the Act does not have an explicit purpose provision, the Court of Appeal in Adidas NZ Ltd v Collector of Customs (Northern Region) determined that the purpose of the Act and of Schedule 2 is to establish the "true cost of the goods to the importer at the time they cross the border". The High Court in the present case considered that including the royalty payments in the cost of the goods was consistent with this purpose.
  d. There were strong policy reasons to support this conclusion, including certainty and simplicity for taxpayers, and to discourage "ingenious drafting" to circumvent customs duties.

- Implication for importers
    a. Customs valuation in the context of related party transactions is a clear focus area for NZ Customs. Care should be taken with respect to related party transactions – and in particular arrangements involving the payment of royalties, or transfer pricing adjustments to the cost of goods.

For more information please contact:

Catherine Francis
Partner, Indirect Tax – PwC New Zealand
Phone: +64 20 4067 6744
Email: catherine.d.francis@au.pwc.com

Philippines

Filing and Processing of Tax Refund Applications

To implement the amendments to Sections 112(C), 112(D), 76(C), 204(C), and 229 of the Tax Code under the “Ease of Paying Taxes (EOPT) Act”, Revenue Regulations (RR) No. 5-2024 covered tax credit/refund claims that are filed starting 1 July 2024 onwards.

The following are the salient points of the regulations:Request letter stating its intention to avail of the option to register as a VAT taxpayer with the BIR;

- **VAT Refund**

  a. VAT refund claims shall be classified into low-, medium- and high-risk claims depending on the amount of the claim, the frequency of filing, tax compliance history, and other risk factors.

  b. The scope of verification in accordance with the identified risks are as follows:

Risk Level	Scope of Verification of Sales	Scope of Verification of Purchases
Low	No Verification	No Verification
Medium	At least 50% of the amount of sales and 50% of the total invoices/receipts issued including inward remittance and proof of VAT zero-rating	At least 50% of the total amount of purchases with input tax claimed and 50% of suppliers with priority on “Big-Ticket” Purchases.
High	100%	100%

c. The scope of verification are subject to the following limitations:

- First-time claimants shall be automatically considered as high-risk and its 3 succeeding VAT refund claims;
- In case of full denial of a claim, the succeeding claim filed shall be classified as high-risk;
- For medium-risk claims, verification shall be adjusted to 100% if the assigned Revenue Officer found at least 30% disallowance of the amount of VAT refund claim;
- Where there are 3 consecutive low-risk claims, the 4th claim shall be subject to full verification regardless of the risk classification;
- Claims by VAT-persons whose registration had been cancelled due to retirement, cessation of business, or cessation of status shall be classified as high-risk;
- For taxpayer-claimants filing on a quarterly basis, the risk classification shall be made for every filing; and,
- Other limitations that may be identified by the CIR through revenue issuances.

d. Complete documentary requirements for VAT refund shall be submitted regardless of the risk level.

e. The application is deemed "filed" upon the submission of the invoices and/or receipts and other required documents.

f. The 90-day period to process and decide on the claim shall start from the "filing" of the claim for VAT refund.

g. In case of full or partial denial, the taxpayer may appeal to the Court of Tax Appeals (CTA) from the receipt of the decision denying the claim.

h. If the claim is not acted upon within the 90-day period, the taxpayer may appeal to the CTA within 30 days after the expiration of the 90-day period, or forgo the judicial remedy and await the final decision of the CIR.

- **Refund of Excess Income Tax Credits for Taxpayers with "going concern" status**

  a. Regular claims, i.e. of taxpayers with "going-concern" status, are subject to the following requisites:

     - The claim must be filed within 2 years from the date of filing of the Annual Income Tax Return (AITR);
     - The income was included as part of the gross income declared in the AITR;
     - The fact of withholding is established by a copy of the withholding tax certificate duly issued by the payor to the payee showing the amount of income payment and the amount of tax withheld.

  b. To comply with the 180-day processing period for regular claims, all offices concerned shall prioritize the processing of income tax credit/refund claim/s in case of dissolution or cessation of business.

  c. If the taxpayer chose the option to be issued a Tax Credit Certificate (TCC) or refund but carried forward the said amount to the succeeding taxable year, the claim for tax credit or refund may be denied, but the carried-over amount may be allowed as credit against future income tax liabilities.

- **Refund of Excess Income Credits for Taxpayers Undergoing Closure**

  a. As an exception to the irrevocability rule, the taxpayers who chose the option to "carry-over" may claim a refund provided that they have permanently ceased operations.

  b. The application shall be decided upon by the BIR within 2 years from the date of dissolution or cessation of business instead of 180 days.

  c. The 2-year period to decide and refund the excess taxes shall commence from the submission of the Application for Cancellation (BIR Form No. 1905) together with the complete documentary requirements.

  d. The approved refund, if any, shall be released only after completion of the mandatory audit of all internal revenue tax liabilities covering the immediately preceding year and the short period return and full settlement of all tax liabilities.

- **Refund or Erroneously or Illegally Collected Tax**

  a. The CIR may:

     - Credit/refund taxes erroneously or illegally received or penalties imposed without authority;
     - Refund the value of internal revenue stamps when they are returned in good condition by the purchaser;
     - Redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction.

  b. The claim shall be filed within 2 years after the payment of the tax or penalty.

  c. The time-frame to process and decide the tax credit/refund shall be 180 days from the date of the submission of complete documents up to the payment of the approved refund or receipt of the TCC.

  d. In case of full or partial denial, the taxpayer may appeal to the CTA within 30 days from the receipt of the denial.

e. In case the tax refund/credit is not acted upon by the CIR within the 180-day period, the taxpayer-claimant may opt to:

   - Appeal to the CTA within the 30-day period after the expiration of the 180 days required by law to process the claim; or
   - Forego the judicial remedy and await the final decision of the CIR.

- **Judicial Claim for Credit/ Refund**

  a. No judicial claim shall be maintained until a claim for refund or credit has been duly filed with the CIR.

  b. No such suit or proceeding shall be filed unless there is a full or partial denial of the claim by the CIR or there is a failure on his part to act on the claim within the 180-day period.

  c. For tax refund claims of excess income taxes of taxpayers undergoing cessation or dissolution of business, judicial claim for tax credit/refund must be made within 30 days from full or partial denial by the CIR.

[Revenue Regulations (RR) No. 5-2024 dated 11 April 2024]

Implementing the VAT and Percentage Tax Amendments Introduced by the Ease of Paying Taxes Act

To implement the amendments on Title IV - VAT and Title IV - Percentage Tax of the NIRC 1997, as amended (Tax Code), as introduced by the EOPT, RR provides the following, among others:

- Amendments on the following words, phrases, or actions used in Revenue Regulation No.16-2005 and its subsequent amendments:

  a. Gross Sales – All references to “gross selling price”, “gross value in money”, and “gross receipts” shall now be referred to as “Gross Sales” regardless of whether the sale is for goods or services.

  b. Invoice – All references to Sales/Commercial Invoices or Official Receipts shall now be referred to as “Invoice”.

  c. Billings for sales of service on account – all references to receipts or payments which was previously the basis for the recognition of sales of services under VAT and Percentage Tax, shall now be referred to as “Billing” or “Billed”, whichever is applicable.

  d. VAT-exempt threshold – The VAT-exempt threshold of P3,000,000.00 shall be adjusted every three (3) years using the Consumer Price Index(CPI), as published by the Philippine Statistics Authority(PSA).

  e. Filing and payment – the filing shall be done electronically in any available electronic platforms, but manual filing shall be allowed in case of unavailability. Tax payments with corresponding due dates shall be made electronically in any available electronic platforms or manually to any authorized agent banks (“AABs”) or revenue collection officers (“RCOs”).

- Other Specific Amendments on VAT Provisions:

  a. Output VAT Credit on Uncollected Receivable:

     - A seller of goods or services may deduct the output VAT pertaining to uncollected receivables from its output VAT on the next quarter, after the lapse of the agreed upon period to pay. Provided that, (i) the seller has fully paid the VAT on the transaction (ii) the VAT component of the uncollected receivables has not been claimed as allowable deduction;
     - Uncollected receivables refer to sales of goods and/or services on account that occurred upon effectivity of these Regulations which remain uncollected by the buyer despite the lapse of the agreed period to pay;
     - The Regulation provided the requisites that must be present to be entitled to VAT credit;
     - In case of recovery of uncollected receivables, the output VAT shall be added to the taxpayer’s output VAT during the period of recovery;

- These rules do not amend the conditions on the deductibility of bad debts expense in the income tax returns as provided in RR No. 25-02.

b. Procedures for claiming a tax refund or Tax Credit Certificate of Input Tax.

- VAT refund claims shall be classified into low, medium, and high risk based on the amount of VAT or other factors with medium and high risk claims to be subject to audit for the relevant year;
- Taxpayers with canceled VAT registration due to cessation of business may apply for refund or Tax Credit Certificate for any unused input tax within two (2) years from date of cancellation provided that the date of cancellation being referred to is the date of the issuance of BIR Tax Clearance;
- The 90 day period to process and decide the application for refund shall commence from the date of submission of the invoices and other documents in support of the application filed provided that the Commissioner must state the legal and factual basis for denial;
- In case of denial of the claim of refund, the taxpayer may appeal within 30 days from receipt of the denial or after the 90 days required to process the claim provided that failure on the part of the BIR official to act within the period shall be subject to administrative liability.

- The Regulations shall apply to sale of services that transpired upon its effectivity. Hence, the output VAT for outstanding receivables on services prior to effectivity shall be declared once collected.

The Regulations shall take effect fifteen (15) days following its publication in the Official Gazette or the BIR official website, whichever comes first. (i.e. 27 April 2024)

[Revenue Regulations (RR) No. 3-2024 dated 11 April 2024]

Implementation of the Risk-based Approach in the Verification and Processing of VAT Refund Claims

Guidelines, policies and procedures are provided by Revenue Memorandum Order (RMO) No. 23-2024 to implement the risk-based approach in the verification of VAT refund claims under Section 112(A) of the National Internal Revenue Code (Tax Code), as amended.

Some notable items in this RMO are as follows:

- The following VAT refund claims shall be automatically classified as high-risk or shall require full verification:
  a. Claims filed on 27 April 2024 to 30 June 2024;
  b. Claims filed by first-time claimant which will remain as such for the succeeding three (3) VAT refund claims;
  c. The fourth (4th) claim following the three (3) consecutive low-risk classification of the processed VAT refund claims;
  d. Claims filed pursuant to Section 112(B) of the Tax Code (Refund of Input Tax);
  e. Claims filed by taxpayers tagged as Cannot Be Located (CBL);
  f. Claims filed by taxpayers with complaints duly filed at the Department of Justice and/or those facing criminal cases before the Courts under the Run After Tax Evaders (RATE) and Run After Fake Transactions (RAFT) programs;
  g. Claims filed by taxpayers who has a fully denied claim from its immediately preceding VAT refund claim;
  h. Applications for VAT refund claim covering more than one taxable quarter, where at least one taxable quarter is already prescribed; and,
  i. Other cases considered as high-risk claims as determined by the Commissioner of Internal Revenue, which shall be covered by a separate revenue issuance.

- A first-time claimant shall refer to those with no history of VAT refund application since registration with the BIR or no previous administrative claim for VAT refund for the last five (5) years prior to the application of claim as certified by the BIR Assessment Programs Division (APD).
- The risk matrix which shall be used as a guide by the processing offices in determining the risk level is in Annex “A” of the RMO
- The scope of verification in accordance with the identified risks are as follows:

Risk Level	Scope of Verification of Sales	Scope of Verification of Purchases
Low	No Verification	No Verification
Medium	At least 50% of the amount of sales and 50% of the total invoices/receipts issued including inward remittance and proof of VAT zero-rating	At least 50% of the total amount of purchases with input tax claimed and 50% of suppliers with priority on “Big-Ticket” Purchases.
High	100%	100%

- The processing of low-risk claims shall be limited only to the checking of the authenticity and completeness of documentary requirements.
- For medium-risk claims, the default 50% verification rate shall be determined as follows -
  a. For sales transactions, the 50% of the total invoices/receipts shall be selected at random by assigning random numbers, which shall be sorted from lowest to highest. The first 50% of the total invoices/receipts starting from the lowest randomly assigned number shall comprise the documents subject for verification.
  b. Sales adjustments supported by credit/debit memo, journal vouchers or other relevant documents shall be fully verified in addition to the minimum 50% of sales to be verified. Provisional and final invoices/receipts shall be counted as one transaction for purposes of identifying the minimum 50% sales that will be verified.
  c. The sales document to be examined shall account for at least 50% of the total sales reported as zero-rated or exempt. If the documents are not sufficient to cover the minimum 50% of the total amount of zero-rated and exempt sales, additional documents shall be taken from the succeeding invoices/receipts.
  d. For local purchases with input VAT claimed, the suppliers of "big-ticket purchases" shall be prioritized in the selection of the 50% of the total suppliers.
  e. The big-ticket purchases shall be subject to 100% verification. The non-big-ticket suppliers shall then be selected randomly by assigning random numbers which shall be sorted from lowest to highest, then selecting the suppliers starting from the lowest randomly assigned number. If not sufficient to cover the minimum 50% of total local purchases with input VAT claimed, additional suppliers shall be selected until the minimum 50% is covered.
  f. For importations with input VAT claimed, the suppliers of imported purchases of goods with input VAT claimed shall be assigned random numbers and sorted from lowest to highest. The first 50% of the total suppliers starting from the lowest number shall comprise the source of documents subject for verification. If not sufficient to cover the minimum 50% of the total importations with input VAT claimed, additional documents shall be taken from the transactions with the succeeding suppliers until the minimum 50% of total importations with input VAT claimed are covered.
- A medium-risk claim where at least 30% disallowance of the total VAT refund claim is found shall be reclassified to a high-risk claim.

[Revenue Memorandum Order (RMO) No. 23-2024 dated 19 June 2024]

Maria Lourdes Lim
Tax Managing Partner, PwC Philippines
Phone: +63 (2) 8845 2728
Email: malou.p.lim@au.pwc.com

Vietnam

Vietnam Continues Providing 2% VAT Cut Until End of 2024

- Under Resolution 142/2024/QH15, the Vietnamese Government has released Decree 72/2024 on 30 June guiding the implementation in this respect, which took effect from 1 July until the end of 2024.

- Some notable points:

  a. The 2% VAT reduction would be applicable to goods and services which are currently subject to 10% VAT (with certain exceptions). Of note, compared with previous Decrees i.e. Decree 15/2022, Decree 44/2023, Decree 94/2023, the Decree does not extend the scope of application of the VAT rate reduction.

  b. The Decree also provides the list of goods and services not entitled to the 2% VAT reduction with details of product codes and HS codes/

  c. Similar to the previous reduction periods, the 2% VAT reduction for eligible goods/ services will be consistently applied for all stages from importation, manufacturing, processing and trading, except for coal exploitation.

  d. For companies declaring VAT under the deduction method, on VAT invoices, the VAT rate will be stated as “8%”. Where goods/services sold are subject to different VAT rates, the VAT rate of each goods/service must be clearly indicated on an invoice.

  e. Where the seller has issued VAT invoices for eligible goods/ services with the normal VAT rate without taking into account this 2% VAT reduction, then the seller and the buyer must handle this according to the invoicing regulations and adjust the output VAT and input VAT accordingly.

  f. The goods/ services subject to 2% VAT reduction shall be declared on Form 01 promulgated under the Decree which will have to be submitted together with the VAT returns.

For more information please contact:

Do Ngoc Lan Thanh

Director, Tax and Legal Services – PwC Tax and Advisory (Vietnam) Company Limited

Telephone: +84 98 3106986

Email: do.ngoc.lan.thanh@pwc.com

ITX Policy Developments

Let's talk

[For a deeper discussion of how these issues might affect your business, please contact]

Matthew Strauch
Partner – Indirect Tax, PwC Australia
Phone: +61 408 180 305
Email: matthew.strauch@au.pwc.com

Pratik Jain
Partner, National Leader – Indirect Tax, PwC India
Phone: +91 98111 41868
Email: pratik.b.jain@pwc.com

Catherine Francis
Partner, Indirect Tax – PwC New Zealand
Phone: +64 20 4067 6744
Email: catherine.d.francis@au.pwc.com

Li-Li Chou
Partner – PwC Taiwan
Phone: + 886 2 2729 6566
Email: li-li.chou@tw.pwc.com

Australian Indirect Tax and the 2024-25 Federal Budget

- There were few indirect tax-specific measures announced in the 2024-25 Federal Budget. Although the Government did announce that it would extend refunds of indirect tax (including GST, fuel and alcohol taxes) under the Indirect Tax Concession Scheme (ITCS) and strengthen the ATO's ability to combat fraud by extending the time the ATO has to notify a taxpayer if it intends to retain a business activity statement (BAS) refund.
- Specifically, in relation to the ITCS the Square Kilometre Array Observatory (SKAO) will have ITCS access upgraded for additional concessions to be claimed for the purchase of vehicles for personal use by SKAO officials or their family. Additional concessions for commercial rent will also be formalised for existing ITCS packages for Bangladesh, Costa Rica, El Salvador and the Taipei Economic and Cultural Office. Construction and renovation concessions will be formalised for the existing ITCS package for the Netherlands. Concessions for both commercial rent and construction and renovation will be formalised for the existing ITCS package for Pacific Trade Invest.
- In relation to BAS refunds, the ATO's mandatory notification period for BAS refund retention will be increased from 14 days to 30 days to align with time limits for non-BAS refunds. Legitimate refunds will be largely unaffected and if there is a legitimate refund retained for over 14 days, the ATO must pay interest to the taxpayer (as is currently the case). This measure will have effect from the start of the first financial year after Royal Assent of the enabling legislation which is yet to be introduced.

Update to the Detailed GST and Food List Australia

- Following the finalisation of GSTD 2024/1, the Goods and services Tax Industry Issues Detailed Food List has been updated via Addendum, to align relevant entries with GSTD 2024/1, add new food and beverage product lines, merge similar entries, as well as update several entries to better explain why they are GST-free.

Taxability of Employee Stock Option Plans (ESOPs) in India

- Government has clarified that the transaction of allotment of Shares/ Securities (ESOPs) by the foreign holding company to the employees of the domestic subsidiary company, as a part of their compensation package is not eligible to GST. Also clarified that GST not leviable on reimbursement on cost-to-cost basis by the domestic subsidiary company to foreign subsidiary company for transfer of such shares. However, GST would be leviable on any mark-up/ fee/ commission charged by foreign holding company from the domestic subsidiary company for allotment of its shares to employees of the domestic subsidiary company, considering such services as import of services by domestic company.

Government Uniform Invoice ("GUI") in Taiwan

- Executive Yuan has approved draft amendments to the Business Tax Act and submitted it to Legislative Yuan for review. The current draft amendment requires e-GUIs to be uploaded to e-GUI Platform for retention and verification purposes within prescribed time limit (i.e. for B2B transactions, e-GUIs shall be uploaded within 7 days of issuance. For B2C transactions, e-GUIs shall be uploaded within 48 hours of issuance). Failure to comply with the prescribed time limit or failing to upload e-GUIs and relevant information will be subject to penalty. The draft amendment elevates the existing requirement for uploading e-GUIs to the e-GUI platform from an administrative regulation level to statutory law level, and introduces penalties to ensure underlying buyers accurately claim input VAT credits.

New Zealand Offshore Gambling Duty Applies from 1 July 2024

- The New Zealand Government enacted a new "offshore gambling duty" of 12% of an offshore gambling operator's profits. The new rules were brought in with the stated intention of "levelling the playing field" between New Zealand resident operators (e.g. domestic casinos) and online operators based offshore.
- The offshore gambling duty applies to GST registered persons who are located outside New Zealand and conduct offshore gambling (defined as any gambling or prize competition subject to the remote services GST rules). Note that for this purpose, GST "registered person" means a person who either is registered or is liable to be registered under the GST Act. This means that the duty should also apply to operators who are currently non-compliant with GST.
- A 12% duty applies to amounts received by offshore betting operators from New Zealand resident bettors, less amounts paid out to New Zealand resident bettors. Amounts which are subject to an existing point of consumption charge (POCC) which applies in respect of sports betting, are excluded from the amount subject to the offshore gambling duty.
- These rules apply from 1 July 2024 and returns are required to be filed quarterly.
- For further information, please see this Inland Revenue publication on the new offshore gambling duty.

Thank you

PWC200938499